

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-817650-D2
AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: Jorge VELAZQUEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1812

Jorge VELAZQUEZ

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 25 June 1969, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specifications found proved allege that while serving as a night steward on board SS SANT NARIANA under authority of the document above captioned, Appellant:

- (1) on 30 August 1968, when the vessel was at Bonaventura, Chile assaulted a member of the crew, one Jack Beilenson, with a knife;
- (2) on 12 September 1968, when the vessel was at Cartagena, Columbia, assaulted by beating a member of the crew, one Salvador Amador; and
- (3) at the same time and place assaulted and battered Amador with a dangerous weapon by cutting him with a knife.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of four witnesses and certain voyage records of SANTA MARIANA.

In defense, Appellant offered in evidence his own testimony and that of two other witnesses.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

The entire decision was served on 30 June 1969. Appeal was time filed on 8 July 1969 and was perfected on 8 December 1969.

FINDINGS OF FACT

On both dates in question Appellant was serving as a night steward on board SS SANTA MARIANA and acting under authority of his document.

On 30 August 1968, Appellant returned to the ship from ashore and entered his room. Jack Beilenson, a baker who shared the room with Appellant was bending over the wash basin brushing his teeth.

Appellant attributed the death of a bird he had bought to Beilenson's turning up the air conditions to make the room cooler. He had asserted that he paid ten dollars for the bird. Appellant held the point of a knife at Beilenson's neck and demanded ten dollars. Beilenson gave him the money and then reported the matter to the chief steward.

On 12 September 1968, Appellant returned to the ship from ashore. At about 1515 or 1520 Salvador Amador was lying on his bunk in his quarters when Appellant entered the room and pounced him in the face. Appellant dragged Amador from his bunk to the deck, continuing to beat him. While Amador was on the deck Appellant cut him with a knife at the left knee. The treatment of Amador's injuries required five stitches above his right eyebrow. The cut on the leg was about four inches long.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

- (1) the decision of the Examiner is against the weight of the evidence;
- (2) it was improper to hear charges as to two unrelated episodes at the same time; and
- (3) the order in excessive considering Appellant's prior good record.

APPEARANCE: Abraham E. Fredman, of New York, New York, by
Martin L. Katz, Esquire

OPINION

I

When an appellant urges that an examiner's findings are

against the weight of the evidence there is only one way in which I can construe the argument as a statement of grounds for appeal, since the examiner as trier of facts is the person who assigns weight to the evidence, and that is to consider it as a statement that the evidence on which the examiner based his findings is as a matter of law not substantial evidence of a reliable and probative nature.

The evidence upon which the Examiner here based his findings is not so inherently incredible that it can be said that a reasonable man must have rejected it. Despite evidence of "alibi" in the Amador incident and Appellant's assertion that the Beilenson dispute involved only a promise of Beilenson to pay for the dead bird, the eyewitness testimony of Amador and Beilenson is inherently credible.

Although it is not necessary that a reviewer on appeal agree with the weight given to evidence by an examiner as long as the evidence relied upon meets the tests of administrative law, I can say in this case that I agree with the Examiner.

II

There are two specific points raised by Appellant which are already covered by the discussion of the Examiner's findings above but which perhaps are worthy of comment in the light of precedent.

The first is that Appellant has placed great stress on the evidence that Amador had locked his door and that Appellant would not, under the routine of the ship's business have had a key to open the door at the time of day in question. In the case discussed in Decision on Appeal no. 1490, there was evidence that a crewmember had entered a passenger's room through a door which had been locked. The examiner in that case correctly held that he did not care how the entry could be explained as long as the evidence convinced him that the entry had in fact been made. I affirmed the examiner's findings and order, noting, in passing, that the record gave rise to a justifiable suspicion as to how the appellant had gained access to the room. The decision was challenged in Federal court and was upheld without pertinent comment. Wheatley v. Shields, D.C. S.D. N.Y. (1968), 292 F. Supp. 608.

In the instant case, it can be seen that it does not matter how Appellant entered Amador's room, as long as the Examiner is convinced on proper evidence that Appellant was in fact in Amador's room.

The other matter to be mentioned here is Appellant's attack on

the Examiner's reliance upon the testimony of the ship's doctor as to his opinion of Appellant's psychiatric condition on the date of the Amador episode. In the case discussed in Decision on Appeal No. 1485, there was question as to the use of an opinion of a ship's doctor as to the Appellant's general condition as to homosexuality. The doctor was not a psychiatrist. In my decision I held that the medical opinion should have been excluded from evidence but that the factual evidence justified the findings apart from the medical opinion. In O'Kon v. Roland, D.C. S.D. N.Y. (1965), 247 F. Supp. 1259, the Court agreed with me that the evidence apart from the medical opinion amply justified the findings but stated that I had too rigorously applied the rules of opinion evidence and that the opinion of the doctor was admissible.

In this case the doctor had three years of experience in psychiatry in Kings County Hospital, New York. The Examiner was entirely justified in relying on his opinion in evaluating the evidence.

III

Appellant's argument that the matters of the Beilenson incident and the Amador incident should have been heard separately because the Examiner's knowledge of one allegation could prejudice his view as to the other allegations, was not timely raised. It was not even raised in this form at the hearing. The first reference to the matter was made at R. 154, recorded on the last day, J February 1969, of a hearing that began on 30 December 1968. It was mentioned in Appellant's closing argument. Even then, it was not asserted that the matters should not have been heard at the same time; it was argued only that each specification of misconduct should be separately considered by the Examiner without reference to the others.

The Examiner's decision makes it clear that he did consider each matter separately, just as Appellant had requested at hearing. The argument on appeal is therefore groundless.

IV

The propriety of the Examiner's order is unassailable. The splitting of the assault and batteries on Amador, one by beating, the second by cutting, could have been attacked on the grounds that the one episode was concerned with two forms of battery consummated on the same occasion. The matter is not raised by Appellant and not further be discussed.

One assault with a knife, in effect to commit a robbery, and another assault and battery which included both beating on the face

and cutting of the leg with a knife, justify an order of revocation.

ORDER

The order of the Examiner dated at New York, New York, on 25 June 1969, is AFFIRMED.

T. R. SARGENT
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 25th day of August 1970.

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